HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 4198 of 2006

PETITIONER : Natwar Singh Nand (Assistant Teacher) S/o Shri Baghela Singj, Aged about 63 years, R/o Village-Nandeli, Post-Hardi, Tahsil-Sarangarh, Distt-Raigarh (C.G.)

VERSUS

RESPONDENTS : 1) State of Chhattisgarh Through: The Secretary, School Education Department, D.K.S. Bhawan, Raipur, Distt- Raipur (C.G.)
2) The Joint Director, School Education Department, Division-Bilaspur, District-Bilaspur (C.G.)
3) The Joint Director, Accounts Treasury and Pension Bilaspur (C.G.)
4) The District Education Officer, Raigarh, District Raigarh (C.G.)
5) The Block Education Officer, Block Sarangarh, District Raigarh (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri Sanjay Patel, Advocate for the petitioner.
Shri Satish Gupta, Dy. Govt. Advocate for the State/respondent.

ORDER
(Passed on 27th day of April, 2007)

1. By this petition, the petitioner has prayed for a suitable writ of direction to quash the order dated 30.11.2005 (Annexure P/3) issued by the respondent no. 3, directing for recovery of a sum of Rs. 32,900/- from the retiral dues of the petitioner, because this amount was wrongly paid to the petitioner owing to incorrect fixation of salary.

(36)

2. The brief facts, in nutshell, are that the petitioner was appointed on 07.09.1962 on the post of Assistant Teacher under the District Education Officer, Raigarh. The salary of the petitioner was revised time to time. The petitioner retired from the post of Assistant Teacher on 28.02.2005. Vide order dated 30.11.2005 (Annexure P/3), issued by the respondent No. 2, it was directed to recover a sum of Rs. 32,900/- from the retiral dues of the petitioner.

3. Being aggrieved, the petitioner has filed this petition seeking a direction to the respondents to restrain the respondents from deducting any amount from his retiral dues as the said order has been passed without affording any opportunity of hearing.

4. Shri Satish Gupta, Deputy Govt. Advocate appearing for the State submits that it is admitted that no opportunity of hearing to the petitioner before the impugned order making deduction of payment of Rs. 32,900/- was made. It is also admitted that the revision of pay as well as payment of revised pay was not done at the instance of the petitioner.

5. I have heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto. The respondents cannot recover the amount, if any, from the retiral dues of the petitioner, without affording an opportunity of hearing to the petitioner. The respondents have also not proved that the excess payment was made after giving any opportunity of hearing to the petitioner. To substantiate his submission, learned counsel appearing

for the petitioner cited a decision of this Court in the case of *Vidya Shankar Tiwari Vs. State of M.P. (Now State of Chhattisgarh) and others,* reported in 2006(2) MPHT 31(CG).

6. In case of *Vidya Shankar Tiwari* (supra), after a period of four years from the date of fixation of salary of the petitioner, he was directed to deposit the excess amount. This Court held that for the mistake of the respondent/employer, the petitioner could not be penalized without following the principles of natural justice. Before asking the petitioner for making refund of extra payment, no opportunity of hearing was afforded to the petitioner. The petitioner had adjusted himself to the facts of the case and had utilized the money what was legally and duly paid to him. No opportunity of hearing was given to the petitioner before the impugned order was passed and as such the same is unreasonable, arbitrary and deserves to be quashed.

7. In view of the foregoing, this petition is allowed. The impugned order dated 30.11.2005 (Annexure P/3) is quashed. The respondents are directed to refund the amount, if any, recovered pursuant to the order dated 30.11.2005 from the petitioner. The amount, if any, recovered from the petitioner shall carry the interest as applicable in savings bank account of nationalized bank from the date of recovery till its payment. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit